**A. J. Schmidt Company; and Wm. A. Schmidt and Sons, Inc. *and* Sheet Metal Workers Union Local No. 19, affiliated with Sheet Metal Workers International Union.** Cases 4–CA–1270 and 4–CA–12471

28 March 1984

## DECISION AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS HUNTER AND DENNIS

On 29 April 1983 Administrative Law Judge Norman Zankel issued the attached decision. The General Counsel filed exceptions and a supporting brief, and the Respondent filed cross-exceptions and a brief in response to the General Counsel's exceptions.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions and to adopt the recommended Order.

## ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the complaint is dismissed.

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

In affirming the judge, we do not rely on his finding, in sec. II,D,2(a), par. 7 of his decision, that it is reasonable to infer from the timing of the layoffs that the Respondent had knowledge of the union activity.

## DECISION

### STATEMENT OF THE CASE

NORMAN ZANKEL, Administrative Law Judge. These cases were heard before me on August 31 and September 1, 1982, and January 18, 1983, at Philadelphia, Pennsylvania.

The cause came before me upon an order consolidating cases, consolidated complaint and notice of hearing issued by the Acting Regional Director for Region 4 of the Board on November 25, 1981.[1] In substance, the consolidated complaint, as amended at the hearing,[2] alleges that the A. J. Schmidt Company and Wm. A. Schmidt and Sons, Inc.[3] violated Section 8(a)(3) and (1) of the Act by discriminatorily laying off employees Gregory Woods, Swen Soring, and Anthony Garzia on October 1, 1981; and that the Employers independently violated Section 8(a)(1) of the Act on various dates between September 1981 and March 1982 by making promises of wage increases and other benefits contingent upon rejection of the Union, interrogating employees concerning their union activities, threatening employees with layoff and/or plant closure, and creating an impression of surveillance of employees' union activities.

The Employers filed a timely answer which admitted certain matters[4] but denied the substantive allegations that they had committed any unfair labor practices.

All parties appeared at the hearing. Each was represented by counsel and afforded full opportunity to be heard, to introduce and meet material evidence, to examine and cross-examine witnesses,[5] to present oral argument, and to file briefs. Counsel for the General Counsel and the Employers' counsel submitted posttrial briefs, the contents of which have been carefully considered.[6]

On consideration of the entire record, the briefs, and my observation of the witnesses and their demeanor, I make the following

### FINDINGS AND CONCLUSIONS

#### I. JURISDICTION

Jurisdiction is uncontested. The Employers are Pennsylvania corporations engaged in the business of custom steel fabrication. They manufacture tanks, duct work, and miscellaneous fabricated parts at two facilities, one situated in Chester and the other in Eddystone, Pennsylvania.

Each corporate Employer admits that during the year immediately preceding issuance of the consolidated complaint it sold and shipped products valued in excess of $50,000 from the locations in Pennsylvania directly to points outside of that Commonwealth. Each corporation admits it is engaged in commerce within the meaning of the Act.

Based on the foregoing, and the record as a whole, I find the Employers are and, at all material times, have been employers engaged in commerce within the meaning Section 2(2), (6), and (7) of the Act.

[1] All dates hereinafter are in 1981 unless otherwise stated.

[2] After oral argument in which all parties participated, I granted the General Counsel's motion to add allegations that the Employers engaged in a variety of independent activities violative of Sec. 8(a)(1) of the National Labor Relations Act (the Act). The Employers, in their posthearing brief, request reconsideration of that ruling. Upon such reconsideration, I reaffirm the prior ruling which permitted the amendments (see official Tr. 8–40). I am satisfied, in all the circumstances, that the Employers have not been prejudiced or deprived of substantive rights. Although the Employers were offered the opportunity to request time to prepare their defense evidence on the new allegations, no such request was made. Instead, the record reflects that each of the allegations added by the General Counsel's amendment was fully litigated.

[3] The Employers' names appear as amended at the hearing.

[4] For purposes of this litigation only, the Employers admitted they constitute a single employer within the meaning of the Act.

[5] All witnesses were sequestered by agreement of counsel, except alleged discriminatee Woods, Union Organizer Jack Bush, William (Bill) Schmidt Sr., William (Drew) Schmidt Jr., and Lou D'Alonzo.

[6] After the hearing closed, the General Counsel filed a "Motion to Amend Record" in which it was asserted (in part) that all parties agreed. That motion, to date, has been unopposed. Accordingly, the motion is granted.

The answer admits, the record reflects, and I find that the Union is and, at all material times, has been a labor organization within the meaning of Section 2(5) the Act.

## II. THE ALLEGED UNFAIR LABOR PRACTICES

### A. *Background*

The recitation of facts below is based on the composite of the credited testimony of all witnesses, unrefuted oral testimony, supporting documents, and careful consideration of the logical consistency and inherent probability of events.

Not every bit of evidence, or every argument of counsel, is discussed. Nonetheless, I have considered all such matters. Omitted material is considered irrelevant or superfluous. To the extent that testimony or other evidence not mentioned might appear to contradict the findings of fact, that evidence has not been overlooked. Instead, it has been rejected as incredible or of little probative worth. *Bishop & Malco, Inc.*, 159 NLRB 1159, 1161 (1966).

Credibility resolutions, wherever necessary, have been based on my observation of witness demeanor, the weight of the respective evidence, established or admitted facts, inherent probabilities, and reasonable inferences which may be drawn from the record as a whole. *Northridge Knitting Mills*, 223 NLRB 230 (1976); *V & W Castings*, 231 NLRB 912 (1977); *Gold Standard Enterprises*, 234 NLRB 618 (1978).

The Employers' admitted managerial hierarchy consists of William A. Schmidt Sr. (herein Bill Schmidt), president of both corporations;[7] John Roberts;[8] William A. Schmidt Jr. (herein Drew Schmidt), vice president; Jay Schmidt, purchasing manager; Robert Mayfield, Eddystone plant manager and vice president; Charles O'Connor, quality assurance manager; Marty Kascavage, accountant; Joe Young and Nick Guiffre, drafting and design work; and Lou D'Alonzo, shop superintendent at the Chester location. Mayfield functions as shop superintendent at Eddystone. The supervisory status of Tommy DeVites is disputed.[9]

The Employers' operations include personnel classified as mechanics, welders, helpers, and leadermen. The mechanic classifications contain two subclasses, first and second, who are grouped according to ability. Also, there are different kinds of welders, identified as MIG, TIG, submerged arc weld, stick weld, and stainless and light gauge. The abilities of welders range from those who can perform all types to those who can perform only one type of welding. Helpers, considered the lowest level work classification, have general laborers duties. For pay purposes, mechanics receive the highest rates of pay, and helpers receive the lowest. There are approximately 10 leadermen who work as mechanics, helpers, and welders approximately 70–90 percent of their worktime.[10]

On approximately September 14 or 15, 1981 (according to Union Business Representative Jack Bush), the Union initiated an organizational drive. Bush's first contact with this Employer's employees was with Erhard Burkhardt at a "submarine" shop located, in Bush's words, "up the street" from the Chester location. He met there informally with Burkhardt and employees Gregory Woods, Emilio Charis, Swen Soring, Dave Williams, and Tony Garzia within a day or two of his first contact with Burkhardt. They discussed possible unionization and agreed other employees should be invited to meet with Bush on September 22.

The first such meeting was conducted on September 22. About 10 or 11 employees were present. Another meeting was held on September 28. Approximately 21 employees attended that meeting. On September 30 Bush met with Woods, Soring, Charis, and another employee, Dick Patten. In addition to discussing the efficacy of unionism, some of the employees signed authorization cards. Woods and Soring attended all three meetings. Garzia was absent from the third.

On Thursday, October 1, Woods, Soring, Garzia together with employees Harris and Elsawy (the latter attended the September 28 meeting) were laid off. Office employee Bruce Johnson, who performed layout work, also was laid off that date.

On November 19, the Union filed a petition for a representation election (Case 4–RC–14929). A Board-conducted election was held March 11, 1982. The Union lost. Objections were filed by the Union and, on December 16, 1982, the Board ordered a second election. (See 265 NLRB 1646.)

### B. *Credibility*

Credibility of the respective witnesses is the foundational element for resolution of the alleged unlawful independent 8(a)(1) violations. Moreover, witness credibility impacts on the element of employer knowledge of the union activities and, in part, to the economic defense against the allegation that the October 1 layoffs were unlawful.

In addition to the factors cited above which I stated were used as a basis for credibility resolutions, I have carefully weighed all the testimony, bearing in mind the general tendency of witnesses to testify as to their impressions or interpretations of what was said rather than attempting to give verbatim accounts. The record is replete with instances of witnesses for each litigant providing testimony in direct opposition to that presented by those of opposing litigants. I shall not discuss completely all of the conflicts in testimony, for to do so would unduly lengthen this decision. On the other hand, I have not ignored all such testimony, nor the arguments of counsel upon it. While the truth may rest in the testimony of one side in a given respect and of the other side in another, the overall impression of credibility with respect

[7] The Employers' brief designates Bill Schmidt as "chairman of the Company," but the answer admitted he was president. The distinction is not critical. Whatever his title, Bill Schmidt is an admitted supervisor within the meaning of the Act.

[8] The parties' briefs attribute differing titles to Roberts. Those distinctions, however, do not affect the Employers' acknowledgment that he is a supervisor within the meaning of the Act.

[9] DeVites' supervisory status is considered separately, below.

[10] The remaining work of leadermen will be described, below, within the discussion concerning DeVites' status.

to each witness does not allow for such distinction where virtually every critical element has been placed in issue by contradictory testimony.

In the credibility contest between the General Counsel's witnesses and those of the Employer, I conclude a fair assessment of their testimony persuades me it is the Employer's version of events which is most reliable.

Generally, the Employer's witnesses presented their testimony in direct, candid, certain, clear, and precise terms. In contrast, the testimony of the General Counsel's witnesses was more generalized, confused, vague, and less forthright.

Overall, I find the General Counsel's witnesses' testimony flawed in material respects regarding the alleged independent 8(a)(1) violations. These matters are discussed with particularity below.

Finally, with respect to credibility it is noted that no party called DeVites to testify. That fact does not alter my overall finding that the Employer's witnesses were the most reliable. As earlier stated, DeVites' supervisory status is disputed. Hence, it is understandable why neither party would want to risk making him its witness. Accordingly, I make no adverse inferences from DeVites' failure to appear as a witness.

### C. *Interference, Restraint, and Coercion*

All of the 8(a)(1) violations, except a single incident contained in complaint paragraph 6(a), are alleged to have occurred in February and March 1982 within a few weeks or days of the March 11, 1982 representation election.

The record reflects that at least Bill and Drew Schmidt made a point of speaking to the employees to persuade them not to vote for the Union. The Employer had participated in earlier representation campaigns over the years. The Schmidts clearly knew that the law proscribes preelection promises based on election results.

Against this backdrop, the following evidence was presented on the 8(a)(1) allegations by the witnesses identified below.

1. *Clarence Pedrick* testified, for the General Counsel, that in September 1981 Bill unlawfully promised him a raise (complaint par. 6(a)); in March 1982, Bill unlawfully threatened to close the plant (complaint par. 6(d)); and also that Drew, in March, unlawfully promised increased insurance and pension benefits.

Pedrick vacillated. First, he claimed Bill conditioned a wage increase upon rejection of the Union during a conversation between them in the summer of 1981. Later, Pedrick claimed the date of the conversation was after the organizational meetings which ended September 28. Finally, Pedrick said the alleged unlawful promise was made after the October 1 layoffs.[11]

Normally, discrepancies in recall of dates is of little significance in making credibility resolutions. However, when coupled with other elements of Pedrick's narrations and the surrounding circumstances, these alterations tend to diminish his reliability. Thus, during cross-examination, Pedrick altered his direct testimony of the alleged unlawful promise. Pedrick admitted that he was told the Employer could not promise anything. The apparent self-contradiction is exaggerated when one considers the probabilities of events. Pedrick's original assertion that Bill made a promise of a wage increase in September (or even October) is not plausible. As earlier noted, no representation petition had been filed before November 19. Moreover, the record reflects the Employer's officials engaged in a concentrated oral campaign in February and March 1982, a few weeks before the scheduled election. Bill and Drew Schmidt acknowledged they engaged employees in conversation during that campaign. In this context, I find it unlikely that Pedrick would have heard Bill make any statement conditioned on election results as early as the time claimed by Pedrick.

There are other reasons I find Pedrick an unreliable witness. First, Pedrick's account of the alleged promise was selective. He merely testified Bill "just told me after the Union was over he was going to give me a raise and it wasn't going to be no quarter." Bill candidly acknowledged speaking with Pedrick during the course of the Employer's campaign in *1982*. Bill denied making the promise and continued to relate the full context of the conversation. Specifically, Bill testified that he accused Pedrick and Pedrick's friend and coemployee, Bobby Frye, of making earlier and frequent efforts to entrap Bill with "side deals." Bill further recalled he explicitly denied he could make any promises. Frye was not called as a witness, nor was Pedrick called to rebut either Bill's accusation or that Pedrick had tried to make any "side deals." As an example of such a "deal," Bill testified that Pedrick had offered to return his authorization card to the Union if Bill would grant Pedrick a raise. Bill testified he answered Pedrick by saying that he could not comply with Pedrick's wishes. As indicated, Pedrick did not seek to rebut this part of Bill's testimony.

That Pedrick was less than candid is shown by his account of a second conversation with Bill a couple of days before the election. Then, according to Pedrick, Frye was present. During this discussion, Pedrick's direct testimony was that Bill said, "if the Union got in, he'd shut the doors." Pedrick once again changed his testimony during cross-examination. He agreed that Bill actually said that if business does not pick up, the Company would continue to lay off its employees.[12]

Pedrick's testimony was self-contradictory in another respect. He also testified that Drew, speaking to a group of employees a couple of days before the election, promised increased benefits. During cross-examination, however, Pedrick admitted Drew said he could not promise the employees anything.

During his cross-examination, Pedrick admitted having been convicted of forgery within the past 5 years. The General Counsel argues that there is testimony which corroborates Pedrick's and that his versions are supported by the Employer's literature which the Board found

[11] Apparently based on Pedrick's last assertion, complaint par. 6(a) was amended to change the time of the event from "in or about September" to "in or after September."

[12] Layoffs had been occurring since July 1981. That issue will be discussed below in further detail.

objectionable.[13] I do not base my findings that Pedrick is an unreliable witness on his prior conviction. The above-cited examples of self-contradiction and selective direct testimony, compared to the more comprehensive and forthright accounts of Bill and Drew Schmidt, are the basis of my findings relative to Pedrick. I do not find any credible testimony from other witnesses to corroborate Pedrick. Indeed Frye, who might have corroborated Pedrick's account of the alleged second conversation with Bill, did not testify.

Finally, there are two reasons I consider the Board's findings regarding the objections are of little probative value in resolving the 8(a)(1) issues. First, Bill's uncontradicted testimony shows the literature was prepared by agents of the Employer, none of whom is implicated in any of the 8(a)(1) allegations. Second, objectionable conduct does not necessarily rise to the status of an independent 8(a)(1) unfair labor practice.

As to the allegation that Drew promised increased insurance and pension benefits, the totality of the direct examination on this subject appears as follows on pages 257–258 of the official transcript.

> Q. Did you have any conversations concerning the election with Drew Schmidt?
> A. Yes.
> Q. When was that?
> A. A couple of days before the union vote.
> Q. Where were you?
> A. In front of Bob Spell's (unidentified) desk.
> Q. And who else was present?
> A. A lot of people around. There was a lot of people around but nobody up to hear what we said.
> Q. What was your conversation with Drew Schmidt at that time?
> A. Somebody asked him what he was going to do and he said that he was going to try to maybe get a pension plan and pay all the insurance.
> Q. Was there anything else said at that time?
> A. Not that I remember.

The cross-examination regarding Drew's remark was quite brief. However, during that cross-examination, Pedrick agreed that Drew had said he could not make any promises.

Drew did not recall any conversation regarding pension and insurance. He testified that he was "very guarded about what we said and if a question came up as to what the Company was expected to do, my answer would be I can't promise you anything." I credit Drew. Pedrick's testimony concerning Drew contains two patent self-contradictions. First, Pedrick claimed no one else but he could have heard what Drew allegedly said. This is inconsistent with Pedrick's claim that it was a different employee who had asked a question to which Drew had responded. Second, Pedrick's acknowledgment that Drew disclaimed he could make promises is inconsistent with the alleged unlawful promise. Even if Drew uttered the words attributed to him by Pedrick, they are sufficiently generalized and ambiguous to negate a connection to the outcome of the election.

Upon the foregoing, I find Pedrick's testimony an unreliable source on which to make findings of 8(a)(1) violations.

2. *Erhard Burkhardt*, the General Counsel's witness, testified that in February, D'Alonzo unlawfully threatened layoffs (complaint par. 6(b)), and that Bill, in March, threatened to close the plant (complaint par. 6(d)). Burkhardt was still an employee of the Employer when he testified.

During direct testimony, Burkhardt said that D'Alonzo told him that (in Burkhardt's words) "in case the Union would come in, that a lot of people would get laid off, and that Bill said (again, in Burkhardt's words) "like if the Union would come in, the Company would phase work out, maybe eventually go out of business."

I found Burkhardt insecure during cross-examination. He could not recall whether he had more than one conversation with Bill. He did not recall what he said to D'Alonzo during their conversation. Moreover, Burkhardt was rather susceptible to counsel's suggestions in framing answers to cross-examination questions. I do not find Burkhardt intentionally strayed from the truth. However, my analysis and observations lead me to conclude his testimony was imprecise, especially compared to that of Bill and D'Alonzo.

D'Alonzo recalled speaking to Burkhardt. He presented a more comprehensive and fluent account. Thus, D'Alonzo freely admitted mentioning layoffs. In that connection, D'Alonzo credibly claimed he "always told the [employees] that regardless of the outcome of the union election there will be layoffs because [he] could see the projection [of available work] was very bad." As will be discussed further, below, D'Alonzo was designated as the managerial official to compile the first layoff list in July 1981. A succession of layoffs followed. The alleged unlawful conversation took place in late February 1981. I find D'Alonzo's version more consistent with the surrounding circumstances. It was made in the very midst of ongoing layoffs. At that time, records in evidence show a consistent diminution in the Employer's work. To attribute possible future layoffs to the election outcome is implausible in this context.

As to Bill's alleged threat to close, Burkhardt digressed from his version on direct examination. When asked to be more specific as to what Bill said, Burkhardt testified Bill actually opined if the Union demands high wages, the Company could not afford them and, if the Company could not afford to pay those wages, then it would have to phase out. I conclude what Bill actually said is more a legitimate prediction than an unlawful threat.

As to the critical facts, I find Burkhardt's accounts less specific and precise than those of Bill and D'Alonzo. I have considered the fact that current employees' testimony is entitled to great weight. Burkhardt is not discredited. However, on balance, I find the testimony of Bill and D'Alonzo more probative.

3. *Clifford Mays*, a laid-off employee whose layoff is not alleged as unlawful, testified as a General Counsel

[13] Neither the Board's decision in 265 NLRB 1646 (1982), nor the objectionable literature is in evidence. However, I take official notice of the those documents.

witness to alleged threats of plant closure and layoffs which, according to him, were made by Bill, Drew, and D'Alonzo in February and March 1982 (complaint pars. 6(b), (c), and (d)).

Mays testified, during direct examination, in strong and positive terms that the alleged threats were made. He said that about 2 weeks before the election "Bill said that he wouldn't tolerate a union . . . and that if he had to, he would . . . lay off individuals." During this conversation, Mays claimed Bill asked how he would like it if Bill came into his house and told Mays' wife she should not be doing the dishes. Bill recalled mentioning layoffs, but denied he linked them to unionization. Instead, Bill testified he said the Company would have to continue layoffs if business conditions did not improve. Bill admitted comparing the business with Mays' home but said this was to emphasize the theme he readily admitted conveying to all employees that he personally did not believe a union should be in his plant. Arguably, Bill's testimony is sufficiently similar to Mays' to justify finding Mays' account of their discussion the more accurate. I do not so hold, however, for two reasons. First, I find Bill's version wholly consistent with his testimony regarding the other incidents in which he was implicated and also consistent with the type of self-styled entrepreneur evoked by his testimonial demeanor. Though Bill sometimes appeared evasive, I attribute that to his rambling style of discourse and not to a desire to distort the truth. Throughout his testimony, he left no doubt of his belief that a union should not be in his plant. In that context, it is easy to conclude that Bill would not "tolerate" a union. But that does not mean Bill used those words. No other witness claimed Bill used such strong language. It is more likely that Mays was interjecting his own conclusionary words while testifying. This likelihood is enhanced by the fact that he had given the Board no prehearing affidavit and testified he had not even spoken of his testimony until the week before the first hearing date. That was at least 5-1/2 months after the alleged events. Bill's spontaneous, straightforward, and inherently consistent testimony was an impressive indicator that he was telling the truth. His denials of wrongdoing are confirmed by the factual backdrop.

Second, as will be shown below, Mays changed critical aspects of his direct testimony relative to the threats allegedly made to him by Drew and D'Alonzo.

Mays testified Drew spoke to him about 3 weeks before the election. According to Mays, Drew said, "he didn't know how I would vote for the Union, and that if it got in, there might be layoffs." However, during cross-examination, Mays changed his testimony so that Drew's layoff comment omitted any reference to the Union or to the election. Drew did not recall mentioning layoffs in any respect to Mays. However, Drew conceded that, if he had spoken of layoffs, it would have been to tell Mays what he said to every employee with whom layoffs were part of a preelection conversation, that "regardless of what happens (referring to the election) we may have to lay some people off."

Mays' direct testimony was similarly altered relative to his assertions of the alleged threats to him by D'Alonzo. During direct examination, Mays claimed D'Alonzo spoke to him about 3 weeks before the election and said Bill "was not going to put up with a union . . . if the Union got in, there would be layoffs." D'Alonzo also is supposed to have said that he had once worked at a company which closed up after a union came in. During cross-examination, however, Mays agreed that D'Alonzo did *not say* if the Union got in that it would cause layoffs. He said simply, "there would be layoffs."

D'Alonzo recalled mentioning layoffs to Mays. D'Alonzo claimed he told Mays regardless of the election's outcome there would be layoffs. He claims he told Mays things were very bad. He steadfastly maintained he did not link layoffs to the election.

Another factor considered, but not dispositive, in evaluating Mays' credibility is the failure of his brother, Mark Mays, a potential corroborating witness to the conversation with Bill, to testify. According to Mays, his brother who lives in Chester, was present during the alleged threat by Bill. Though it is improper for me to base a credibility finding against Mays on the failure to produce a corroborating witness, I consider that omission *one* of the elements on which an overall finding may be made.

The testimony of Drew and D'Alonzo was internally consistent, supported by available documentary evidence,[14] and was substantially corroborated in material respects by the General Counsel's witnesses, including Mays, after they had changed the damaging versions of their direct testimony. I find each more reliable than Mays and the other witnesses discussed.

4. *Emilio Charis*, a current employee of the Employer at the time of the hearing, was presented by the General Counsel to show Mayfield and Bill promised him increased economic benefits, conditioned on rejection of the Union (complaint pars. (f) and (g)).

Charis impressed me as the most candid of the General Counsel's witnesses. His testimony was the most comprehensive.[15] Nonetheless, I adopt the versions presented by Mayfield and Bill because Charis' testimony reflects a clear tendency to recount what was said to him broadly and in inconsistent conclusionary terms rather than with precision, while Mayfield and Bill were direct, certain, and consistent when describing the substance of specific critical conversations. For example, during direct examination on the allegation that Bill unlawfully promised benefits, Charis testified Bill said it was, in Charis' words, "hard" for Bill to promise anything for anybody. At first, during cross-examination, Charis interjected a threat (not alleged in the complaint as having been made by Bill to Charis) of layoffs. Thus, Charis testified that

[14] The General Counsel claims D'Alonzo's credibiity is diminished by his failure to produce the July 1981 layoff list which he purportedly prepared. I disagree. D'Alonzo credibly explained the "list" consisted of notes in a looseleaf book he maintains for a variety of purposes and that the salient pages were destroyed long before the hearing. Inasmuch as the layoffs had been implemented and the charge herein not filed until after that time, there was no apparent reason for D'Alonzo to have retained the "list."

[15] The comparatively staccato presentations by the other General Counsel witnesses, whom I have found unreliable, are not a basis of my credibility resolutions. That aspect of their testimony is attributed in part to trial counsel's tactics in presenting the elements of her prima facie case.

Bill said if the Union gets in, there would be "a lot of layoffs." Later, when pressed, Charis agreed that Bill actually said, "if the Union got in, and the Union demanded wages higher than he could afford to pay, that he might have to lay off more people." Still later, during cross-examination, Charis explained (as to the alleged unlawful promise) that Bill told him, "it was a tough moment to promise anything to anybody." In evaluating Charis' testimony, I have taken into account his obvious difficulty in articulating responses to interrogation in fluent English. He exhibited no difficulty comprehending the questions, however. On balance, Charis' direct testimony is rendered less reliable than Bill's because of the variations noted and because ultimately his description substantially comports with Bill's.

Other deficiencies exist in Charis' testimony as to the alleged threats by Mayfield. Charis' account of their conversation contains numerous qualifications and is imprecise. Also, Charis interjected a threat to close not alleged to have been made by Mayfield to him. Thus, Charis claimed, during direct examination, that Mayfield said, "the Union getting in to the Company, *maybe it was no good for anybody. Because the Company . . . would close down.*" (Emphasis added.) On cross-examination, Charis explained what Mayfield actually said was "if the Union wins, *maybe the Company would be closed because the Company is too small for what the Union is asking for.*" Finally, Charis admitted his memory about the conversation was incomplete.

In contrast, Mayfield's account was direct, sure, and precise. He readily admitted to having some discussion concerning insurance, pensions, and wages which are the subject of the alleged unlawful promises of benefits in complaint paragraph 6(f). Mayfield was uncontradicted in his assertion that the dialogue between him and Charis was friendly, the subject of a wage increase was initiated by Charis, and Mayfield's response that Charis was soon due for an increase was unconnected to the election. Viewed in their totality, I accept Mayfield's accounts as the more accurate of what occurred between him and Charis.

When Charis testified Mayfield spoke of pensions, Charis said Mayfield told him that even management does not have a pension plan; that such a plan was being worked on for a long time. Charis agreed that Mayfield said, "I don't know if we are going to get it [the pension plan] or when we're going to get it. It's hard to say." Mayfield admitted saying that the Employer had been looking into a pension plan for the entire Company for a long time but denied connecting the pension plan to the outcome of the election. The entire context of Mayfield's discussion with Charis leads me to conclude that his pension comments, though arguably an implied promise of benefit, comprise part of an enumeration by Mayfield to Charis of the existing conditions of fringe benefits and not proscribed conduct.

In complaint paragraph 6(g), Bill is also alleged to have created an impression of unlawful surveillance of union activities. In salient part, Charis testified that, on the day before the election, Bill said "that somebody told him that I tried to get him to vote for the Union." The General Counsel sought to elicit some meaning to that testimony. Thus, Charis was asked, "did he [Bill] say anything to you as to whether he believed what he had heard about your involvement?" Charis answered, "well, yeah, he said everything that comes to him, you know."

Bill was not asked to deny the allusion to what may have been reported to him by another employee. I find Charis' total testimony on this issue vague and somewhat confusing. However, even if Bill were found to have told Charis someone reported Charis had solicited a vote for the Union, I am not persuaded that comment, alone, rises to the stature of proscribed surveillance. The remark itself easily is understood to be an apparently unsolicited report to Bill by an unidentified employee. I find it difficult to declare the comment implies the existence of a programmed effort by the Employer to spy on the union activities of its employees. Accordingly, I find no merit to that part of complaint paragraph 7(g) which alleges the creation of unlawful impressions of surveillance.

Charis also testified that Bill "said stay away from the Union, that it would be better for me because every time I go to my country,[16] you know, he gave me a couple of weeks off, and when I come back from there I still have my job." As indicated, complaint paragraph 6(g) alleges unlawful *promises*. There is no allegation of threats, express or implied, of withdrawal of any benefits. Bill unequivocally denied threatening to refuse time off to Charis to visit his country if the Union were elected the employees' representative. Bill admitted speaking to Charis to induce him to vote against the Union. In that context, I consider the words Charis ascribed to Bill a reminder of the benefits Charis received without a union. In view of Charis' earlier reported acknowledgment that Bill cautiously disclaimed he was making any promises, I find it unlikely that Bill would have suggested any benefits would be withdrawn. The complete context of the conversation between them, in my view, tends to negate the requisite tendency to coerce required by the Board for an 8(a)(1) violation.

Finally, Charis testified Bill said if "I want to go to school, Bill would pay for my school." Bill unequivocally denied making such a promise. He testified a policy existed for approximately 10 years which afforded employees an opportunity to go to school at the Employer's expense. Charis further testified that during their conversation, Bill "told me that if I wanted to make more money, you got to go to school where I can read blueprints, and do a job like a mechanic and welder together."

I find that Bill's comments regarding school do not amount to a promise of benefits conditioned on the election's outcome. He simply reiterated the existing benefits and, in the context his electioneering, reminded Charis that opportunities to enhance his employment position were already in place if he wished to take advantage of them.

## Conclusion

On all the foregoing, I find no credible evidence exists to support the allegations contained in complaint para-

[16] Charis is foreign born.

graphs 6 (a)–(g) by a preponderance of evidence. Accordingly, I shall recommend their dismissal, in toto.[17]

I have considered the comment of Judge Marvin Roth (*Michigan Products*, 236 NLRB 1143, 1146 (1978)), adopted by the Board without comment that "It is immaterial that an employer professes that he cannot make any promises, if in fact he expressly or impliedly indicates that specific benefits will be granted. *Westminster Community Hospital*, 221 NLRB 185 (1975); *American Medical Insurance Company, Inc.*, 224 NLRB 184 (1976)." My findings that no independent 8(a)(1) violation occurred are based on my conclusion that the record as a whole does not show that the conversations on which the allegations are predicated occurred as the General Counsel asserts. Though the Board's findings that certain of the Employer's campaign literature arguably shows a proclivity to impose on employees' rights to an untrammeled election atmosphere, I decline to substitute that factor in place of more direct credible evidence that the individuals implicated in the allegations before me show those particular individuals made the alleged proscribed statements.[18]

### D. *The Discrimination*

#### 1. The facts

##### a. *DeVites' status*

A threshold question is presented regarding the alleged 8(a)(3) violations. DeVites' supervisory status must be determined. The prima facie element of employer knowledge of union activity among its employees rests on whether such knowledge may be imputed to it by virtue of information which may have been conveyed to DeVites. Thus, alleged discriminatee Woods testified without contradiction that he invited DeVites to the first organizing meeting held on September 22 among the employees. According to Woods, DeVites said other labor organizations had been unsuccessful in the past at this Employer, and commented a union might be good for the younger employees, but not for him. I credit this part of Woods' testimony.[19]

The General Counsel contends, and the Employer denies, that DeVites is a statutory supervisor. The operative facts relating to this issue are substantially undisputed.

DeVites is classified as a leaderman. As such, he is a group leader of three or four employees. He and the other leadermen report directly to D'Alonzo. Leadermen are hourly paid, as are other production personnel. They receive the same fringe benefits, such as vacations and insurance, as other hourly paid employees. Conceded supervisors receive different vacation and insurance benefits. Although leadermen sometimes receive bonuses, such payments are also made to other hourly personnel, such as grinders or welders, as rewards for meritorious job performance.

Leadermen are responsible for ensuring continuity of work flow. In that connection, DeVites routinely transfers employees among jobs. He also lays out the work of employees in his group, and is charged with seeing to it that each employee has work to do. DeVites spends approximately between 70 and 90 percent of his time doing manual labor.

Leadermen have no authority to hire or fire employees. Woods and alleged discriminatee Soring testified they consulted DeVites when they wanted time off. Their testimony reflects they simply told him they intended to take time off, and that DeVites responded, "okay."

Leadermen can recommend wage increases. It appears such recommendations are subject to independent determination by the admitted supervisors. DeVites has apparent authority to resolve employee grievances. Thus, Soring testified he spoke with DeVites regarding his wages and that DeVites said, "he would take care of it." Also, when Soring had problems regarding vacation benefits, it was DeVites who brought the problem to Drew's attention.

Leadermen sometimes recommend individuals for hire, but such recommendations are accepted from other employees as well. The admitted supervisors attend regularly scheduled management meetings. Leadermen are excluded. Leadermen voted in the March 11, 1982 representation election.

In September-October 1981 there were approximately 140 shop employees. Among them were 10 to 12 leadermen.

This issue is not free from doubt. On balance, especially the high ratio of employees to supervisors if the Employer's position were to prevail (*Pennsylvania Truck Lines*, 199 NLRB 641, 642 (1972)), I conclude there is sufficient evidence to warrant a finding that DeVites is a statutory supervisor under the theory that he responsibly directs the activities of other employees (*Custom Bronze & Aluminum Corp.*, 197 NLRB 397 (1972)).

The record shows that D'Alonzo cannot possibly be in direct touch with all production employees for most of each workday. That factor is a persuasive indicator that any other finding is unrealistic and illogical. A contrary finding would subject the employees to operating without on-the-spot supervision.

In making his work assignments to other employees, DeVites evidently uses independent judgment (*Sumco Mfg. Co.*, 251 NLRB 427, 432 (1980)). The fact that individuals may spend "much of their time performing duties similar to those performed by others within their respective areas" (*Liquid Transporters*, 250 NLRB 1421, 1425 (1980)) does not preclude a finding of supervisory status where the (disputed) individuals also schedule and assign work and move employees from one job to another.

[17] The part of par. 6(b) which avers D'Alonzo engaged in unlawful interrogation is not separately discussed because I can find no record evidence to support it.

[18] Even assuming I were to have found that some or all the 8(a)(1) violations occurred, this would not affect my conclusion, discussed below, that the Employer did not discriminate against its employees in violation of Sec. 8(a)(3).

[19] To the extent this credibility resolution conflicts with others, such division of credibility findings is permissible. A trier of fact is not required to believe the entirety of a witness' testimony (*Maximum Precision Metal Products*, 236 NLRB 1417 (1978)).

That leadermen voted in the election is not dispositive of the supervisory issue (*King Trucking Co.*, 259 NLRB 725, 729 fn. 12 (1981)).

Various criteria exist by which the Board determines supervisory status. It is not necessary that an individual possess all the indicia identified in Section 2(11) of the Act. The statute is disjunctive. Possession of any indication of supervision makes one a statutory supervisor (*NLRB v. Metropolitan Life Insurance Co.*, 405 F.2d 1169 (2d Cir. 1968)); *Great American Insurance.*, 176 NLRB 474, 475 (1969)). DeVites' leaderman title, also, does not resolve the issue (*Golden West Broadcasters-KTLA*, 215 NLRB 760, 762 fn. 4 (1975)).

On all the foregoing, I find that, at all material times, DeVites was a supervisor within the meaning of the Act.

b. *The layoffs*

As earlier described, a total of six employees were laid off on October 1. The Union's three organizational meetings all had been held within the span of the 8 days immediately preceding the layoffs.

Three of the six employees are alleged as discriminatees. They are Woods, Soring, and Garzia. Extensive evidence was presented relative to Woods and Soring. Garzia did not appear at the hearing. As to him, the record simply reflects that he attended some of the organizational meetings and signed a union authorization card dated September 22.

Woods had two periods of service; first as a trade school student in 1973 and 1974, then as a welder from January 1981 until the October 1 layoff.

Soring, a welder-fitter, also had two periods of employment. First, from September 1975 until he resigned in September 1977; and again from October 1980 until the October 1 layoff.

Woods, Soring, and Garzia became involved in the organizational activities on the first day or two of the Union's advent. They, in addition to other employees (Charis, Burkhardt, and Dave Williams) issued oral invitations to other employees to attend the organizational meetings. Woods, Soring, and Garzia signed authorization cards before their layoffs. Union Business Representative Bush considered Woods, Soring, Garzia, Charis, Burkhardt, and Williams his organizing committee.

As indicated earlier, Woods invited DeVites to the first organizational meeting. In addition, I find that Soring spoke to DeVites about the Union shortly after that meeting. Soring's uncontradicted testimony is that he told DeVites there would be another organizational meeting and discussed with DeVites the "benefits of having a union."

There is no evidence that any of the alleged discriminatees had been the subject of formal discipline during their employment. However, certain incidents during their employment are relevant, as they form a part of the reasons asserted by the Employer for layoff selection. Thus, D'Alonzo credibly testified Soring quit in July 1981 over a dispute concerning vacation pay, breached working hours by reporting late and leaving work early, and frequently expressed discontent with his salary. Woods, too, absented himself from work with Soring, did not become qualified to perform specialized types of welding such as "MIG" and "TIG," and also made frequent wage complaints. D'Alonzo credibly testified Garzia had a problem with drug or alcohol abuse, would not wear protective equipment, and had actually been warned that he might be discharged because of intoxication.

The Employer had a policy regarding wage increases. Under that policy, an employee's performance is reviewed approximately each 6 to 9 months. If merited, wage increases of 25 cents are granted. In September, Soring requested an increase, and was granted a 25-cent raise by Drew. Woods also received a wage increase in September. His raise came after Woods told Drew he was dissatisfied with his wage rate. Previous to the September raises, Soring and Woods were granted increases at approximately the intervals specified in the Employer's policy.[20] In Woods' case, his September raise was approximately 6 months since an automatic increase granted at approximately his first 30 days of employment in 1981. Woods complained he was not satisfied with the 25-cent September increase.

It was D'Alonzo who laid off each of the alleged discriminatees on October 1. That morning, Soring had been assigned by DeVites to work on a new job. In the afternoon, D'Alonzo told Soring work was slow and he was being laid off. Soring informed DeVites he had been laid off. DeVites exclaimed, "I can't believe the son-of-a-bitch did it." DeVites told Soring he did not know how he would get the work out.

Shortly after, Woods was called into D'Alonzo's office and laid off. Woods asked D'Alonzo if the layoff had anything to do with the Union. According to Woods, D'Alonzo said, "I can't talk about it." D'Alonzo testified he told Woods, "I don't know anything about that [the Union]. We are short of work." I credit D'Alonzo's account. It is consistent with what he said to Soring. It is internally consistent with the Employer's overall defense which, as seen below, I shall credit. Moreover, it is consistent with Woods' own apparently self-contradictory testimony that D'Alonzo told him he had the dirty job of laying people off and that work was getting slow.

None of the alleged discriminatees had been recalled to work at the time of the hearing.

2. Analysis

a. *The applicable legal principles—the General Counsel's prima facie case*

The parties agree disposition of the allegations of the discriminatory layoffs is governed by the principles of *Wright Line*, 251 NLRB 1083 (1980). In *Wright Line*, the Board declared that in dual-motive cases the General Counsel first must prove the existence of a prima facie case showing the alleged unlawful termination was motivated by unlawful considerations. Thereafter, the Board

[20] The General Counsel argues that two 25-cent increases granted Soring on January 25 and February 8, 1981, respectively, diminish the Employer's contention that Soring was a below-par employee. I agree that situation presents a suspicious circumstance. However, I find it of little probative worth. Those increases were granted 7 months before the union activity and were reasonably explained.

held that the burden of proof shifts to a respondent to demonstrate it would have taken the alleged unlawful action even in the absence of an employee's protected activity.

The Third Circuit Court of Appeals, the circuit in which the instant case arose, disagrees that the burden of proof shifts on a prima facie showing to the Respondent to exonerate itself. The Third Circuit holds that the General Counsel retains the burden of proof by a preponderance of evidence. *Behring International v. NLRB*, 675 F.2d 83 (3d Cir. 1982).

Under any analysis, I conclude the General Counsel has not met the burden of establishing that protected conduct was "a motivating factor" in the Employer's October 1 layoffs. See *Mini-Industries*, 255 NLRB 995 fn. 2 (1981).

The prima facie case consists of proof that the employees engaged in protected activity, the employer had knowledge of that activity, and the layoffs were motivated by antiunion considerations and had the tendency of discouraging or encouraging the employees' union activity.

Each of the alleged discriminates, particularly Woods and Soring, had engaged in union activity. Thus, each signed an authorization card and played a prominent role in the Union's organizing efforts by functioning as members of the organizing committee.

The knowledge of the union activity imparted by Woods' and Soring's invitations to him to attend the organizational meetings and discussion of the efficacy of unionism, I conclude, is imputable to the Employer by virtue of DeVites as a statutory supervisor. It is true that there is no direct evidence that DeVites expressly relayed his knowledge to superior management officials. However, rarely is such direct evidence available.

Another factor militates in favor of making an inference that the Employer possessed knowledge of the union activity. That factor is the timing of the layoffs. The layoffs occurred only 3 days after the third organizational meeting. They occurred on the heels (within 2 weeks) of the beginning of the union activity. In this context, it is reasonable to infer the Employer had knowledge of the union activity.

Nonetheless, I conclude the prima facie element of unlawful motivation is lacking. The General Counsel relies on a variety of factors as proof of such motivation. These factors are: The alleged independent 8(a)(1) conduct; the Board's findings of unlawful threats in the Employer's campaign literature; timing of the layoffs; DeVites' assignment of new work to Soring on the layoff date; the fact that three of the five October 1 layoffs involved employees working under a single group leader, DeVites; the fact that Soring and Woods had been apparently considered satisfactory employees until the union drive (as exhibited by their wage increases); and the fact their shortcomings and poor attitude were countenanced by the Employer for a lengthy time before the layoffs.

I concede this portrayal of events normally provides a basis for the inference of an underlying unlawful motive. However, the record as a whole, reduces their potency. They are neutralized by other factors. Thus, I have found, above, there is no merit to the 8(a)(1) allegations. I have found the Board's conclusions in the representation case unpersuasive on the instant allegations of discrimination. The timing of the layoffs will be found (within the discussion of the Employer's economic defense) to be coincidental to the union activity; the impact of Soring's assignment of new work by DeVites is negated by the fact the record clearly demonstrates DeVites took no part in the deliberations on the decision to lay off employees at any time; the timing of the wage increases was consistent with the Employer's outstanding wage policy and D'Alonzo and Drew provided credible explanations as to how the layoff criteria were applied and the Employer's efforts to convert Woods and Soring to more satisfactory employees; and the reason given by D'Alonzo to both Woods and Soring simultaneous with their layoff is consistent with the Employer's contentions the layoffs were due to reduced labor requirements.[21]

The Employer may have acted unreasonably, and even arbitrarily, in its selection of Woods and Soring for layoff. That alone is not the equivalent of unlawful discrimination (*International Computaprint Corp.*, 261 NLRB 1106 fn. 4 (1982).

b. *The economic defense*

If my analysis of the inadequacy of the General Counsel's prima facie case is imprudent, and it is found the record establishes a prima facie case, I would nonetheless recommend dismissal of the 8(a)(3) allegations. As noted, I conclude the evidence requires dismissal under both the Board's shifting burden analysis and also the Third Circuit's continuing burden on the General Counsel to prove a prima facie case. Neither would the preponderance of evidence support a finding that the layoffs were discriminatory nor that the layoffs would not have occurred in the absence of union activity. This is so because I am persuaded the layoffs were motivated by the Employer's perceived need to effect layoffs for economic reasons and that the October 1 layoffs were purely coincidental to the Union's organizing efforts.

The Employer's extensive economic defense was adduced virtually without contradiction. In the beginning of 1981, there were approximately 140 production employees. Two of the Employer's major customers, Boeing and Westinghouse, had told the Employer to defer work on some of their previously placed orders. Summaries of records in evidence show the Employer's backlog of work orders to be performed in July had dropped to its lowest level of 1981; and its backlog was then considerably below the figures for the previous July. Drew credibly testified it was evident that "a crest" had been reached and that a business change was occurring which forecasted "that there was going to be hard times ahead."

Thus, in July, D'Alonzo was instructed to prepare a list of employees to be laid off. The uncontradicted testimony shows the Employer is labor intensive; that labor

[21] With regard to the fact that most of the October 1 layoffs occurred within DeVites' group, I note that Charis, Burkhardt, and Williams, also members of the Union's organizing committee, had not been laid off.

costs are the Employer's greatest expense. D'Alonzo's instructions were to establish a list of 15–20 employees for potential layoff. D'Alonzo credibly testified the criteria for compiling the list were employees' attitude, performance, and absenteeism. Seniority was not a significant factor.

Using those criteria, D'Alonzo drafted the layoff list and showed it to Drew in July. Four employees were immediately laid off on July 24. All four were welders. Two more welders were laid off on August 12. By early September, one more welder and one helper were laid off. Thus, seven welders and one helper were laid off between July 24 and early September. The General Counsel does not at all address these pre-October layoffs. Thus, the General Counsel's theory of violation, I find, is predicated on a falacious premise because it is taken out of context.

In the last week of September, the Employer's accountants reported on their fiscal yearend (August 31) audit. Drew received an oral report that "it was not a good picture at all and that we better do something to change what we've been doing." Drew testified he immediately told D'Alonzo to proceed with additional layoffs. At that time, only five names remained on D'Alonzo's layoff list presented in July. As reported, eight employees had been laid off. The balance of employees on the original list had quit or were discharged. D'Alonzo immediately effected the layoffs on October 1 which was the first regular payday after he was told to implement those layoffs late in September.

D'Alonzo explained in detail how he applied the layoff criteria to each of the five employees laid off on October 1. Though the General Counsel made inroads as to some of those factors, to explain each here would unduly lengthen this decision. It is sufficient to note that I conclude such inroads amounts to no more than suspicious circumstances. They constitute an attack on managerial judgment.

As noted, when D'Alonzo laid off Woods and Soring, he told each the layoffs were due to reduced work. There is no evidence what he told the other two employees in his control whom he laid off. Drew testified without contradiction that the fifth employee, Johnson (the office employee), was laid off due to business conditions.

The General Counsel challenges the assertion that the records support the oral testimony presented by the Employer's witnesses. Thus, the General Counsel claims the Employer's "documents showing backlog and sales figures *at the time of the layoffs* do not support its claims as to the (coincidental) timing of the layoffs." (Emphasis added.) It is true, as the General Counsel avers, the records show that sales reached a low point on July 1, and rose for several months thereafter; that sales were increasing on October 1; and that new employees had been hired even during July and August, the lowest sales months. However, Drew explained, without contradiction, that the increased backlog was attributable to the fact that customers had informed the Employer to defer working on orders that were already placed. As to the new hirings, the records reflect that of the 10 new employees hired, only 1 was a welder and 9 were helpers. The former, as earlier noted, were paid at higher rates than the latter. The records and relevant testimony actually reveal that the helpers were needed to replace individuals who had been temporary summer employees.

I consider the General Counsel's analysis based on records to be only superficially appealing. It is based on a sampling of statistics which are limited in time. Thus, the General Counsel's statistical theories culminate in October. Such limitation is, in my view, too narrow in scope to provide a realistic and accurate base for the evaluation required by the parties' contentions. It presents a distorted view of the Employer's operations. It ignores the fact that the backlog in November and December dropped to a level considerably lower than any backlog figures for 1980. Moreover, at the end of calendar year 1981, the total 1981 backlog had dropped by approximately 20 percent from the total for 1980, and continued to drop in 1982 to 32 percent of the 1980 figures.

In the long range, the Employer's sales figures show a similar pattern. In 1980, average monthly sales were $504,000. In 1982, average monthly sales declined to $356,714. Finally, the employee complement over the extended time period also significantly declined. As noted, there were approximately 140 employees at the beginning of 1981. By year's end, there were 125 employees, and by the end of 1982, only 83 employees remained.

Inasmuch as the Employer's records, over what I consider to be a more representative time than used by the General Counsel, show that the Employer's perception in July and September that its business condition was deteriorating was correct, I credit the evidence by which the Employer claims the layoffs which began in July were dictated and motivated by economic considerations. Accordingly, I find that the October 1 layoffs would have occurred even in the absence of the union activity. In so concluding, I am mindful of the fact that other members of the Union's organizing committee were still employed on the hearing dates, notwithstanding the fact that several months had elapsed since October 1 and the Employer continued layoffs among a substantial number of its employees. This is a significant factor to be considered in assessing the Employer's motivation (see *International Computaprint Corp.*, supra at 1106).

On all the foregoing, I find there is no merit to the allegations that Woods, Soring, and Garzia were laid off in violation of Section 8(a)(3) of the Act on October 1.

On the basis of these findings of fact and on the entire record in this proceeding, I make the following

## CONCLUSIONS OF LAW

1. A. J. Schmidt Company and Wm. A. Schmidt and Sons, Inc. are employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Sheet Metal Workers Union Local No. 19, affiliated with Sheet Metal Workers International Union is a labor organization within the meaning of Section 2(2) of the Act.

3. The Employers did not violate Section 8(a)(1) of the Act in any of the respects alleged in complaint paragraphs 6(a)–(g).

4. The October 1, 1981 layoffs of Woods, Soring, and Garzia were not discriminatory within the meaning of Section 8(a)(3) and (1) of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[22]

## ORDER

The complaint herein is dismissed in its entirety.

[22] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.